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October 24, 2024

By ECF

The Honorable Cathy Seibel
United States District Judge
United States Courthouse
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Re: United States v. Frank Butselaar, 22 Cr. 560 (CS)

Dear Judge Seibel:

We write in an effort to narrow Mr. Butselaar's request to offer evidence at trial regarding the "presence of, views of, or consultations with lawyers or other professionals," (Dkt. 65) taking account of the Court's observations at the pre-trial conference held on October 21, 2024. We have just now received the Government's submission on these issues but, based on our brief review, believe that our position stated below may render moot many, if not all, of the Government's claims.

Mr. Butselaar does not seek to introduce the substantive "views of" lawyers or other professionals to in any way suggest that Mr. Butselaar relied upon or otherwise predicated his opinion on the appropriate tax structures for the taxpayers that are subject of the Superseding Indictment. As Your Honor is aware, and the terabytes of discovery demonstrate, both taxpayers were independently supported by and consulted with an array of professionals in the United States and abroad in connection with their global commercial activities. Mr. Butselaar's opinion was one input among many that shaped the actions taken by and on behalf of the taxpayers. Mr. Butselaar himself took no steps upon relaying his opinion to other professionals and the taxpayers. Instead, he conveyed an opinion that was one influence of the many for the subsequent steps taken. Accordingly, what other professionals said to him regarding his proposed tax structure may have influenced his thinking and opinion (rightly or wrongly) but he ultimately came to his own conclusions and offered them to the taxpayers and their teams. Mr. Butselaar did not dictate

The Honorable Cathy Seibel, U.S.D.J.
United States v. Frank Butselaar, 22 Cr. 560 (CS)
October 24, 2024
Page 2

whether or not his opinion was eventually adopted and was not tasked with taking any steps to make his opinion concerning the relevant U.S. tax matters operational.

This is a crucial distinction between the allegations against Mr. Butselaar and the allegations against Sam Bankman-Fried in *United States v. Bankman-Fried*, No. 22-CR-673, 2023 WL 6392718 (S.D.N.Y. Oct. 1, 2023) ("*Bankman-Fried I*"), which has been a topic of significant discussion on these issues. In *Bankman-Fried*, the defendant contended that he acted on the advice of and in reliance upon various lawyers and professionals. Mr. Butselaar is not advancing such a defense. Instead, Mr. Butselaar maintains that he provided good faith advice to the taxpayers and their team of professionals to advance the taxpayers' objectives. His opinion took consideration of other views, both those that in whole or in part agreed with his opinion and those that did not, but Mr. Butselaar takes full responsibility for his conclusions which he relayed to others. This representation should put to rest the Government's suggestion that Mr. Butselaar is "trying to back-door a reliance defense." (Tr. at 56:3-4).

We accept and agree with the Court's determination that Mr. Butselaar should be permitted to adduce evidence and present argument that, "if [Mr. Butselaar] were doing something wrong, [Mr. Butselaar] wouldn't have engaged with all these professionals." (Tr. at 56:6-10; 56:16-19). By contrast, Mr. Butselaar will not seek to introduce evidence or present argument that he subjugated his professional judgment to the views expressed by other professionals in offering the opinion that Mr. Butselaar ultimately provided to the taxpayers and their teams.

We hope this submission assists the Court and provides greater articulation of our position. In addition, Mr. Butselaar initiated a telephone call with the Government to further seek to narrow any dispute in advance of tomorrow's pre-trial conference, which is scheduled at the Government's request for later this evening.

Thank you for the Court's consideration in this matter.

Respectfully submitted,



s/ Kerry A. Lawrence

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cc: All Counsel (via ECF)